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BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION OR	:	
REVOCATION OF THE LICENSE OF:	:	Administrative Action
	:	
PETER MIKHAIL, R.P.	:	FINAL ORDER
License No.: 28RI02800600	:	OF DISCIPLINE
	:	
TO PRACTICE AS A PHARMACIST	:	
IN THE STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Pharmacy (the "Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Respondent Peter Mikhail ("respondent") is a pharmacist in the State of New Jersey and has been a licensee at all times relevant hereto.
2. On or about April 19, 2008, respondent was arrested and charged with possession of prescription drugs, in violation of N.J.S.A. 2C:35-10.5, obtaining CDS by fraud in violation of N.J.S.A. 2C:35-13, and possession of certain prescription drugs in violation of N.J.S.A. 2C:35-24.
3. According to the narrative in the investigation report, Jeanne Lai, the manager of the Rite Aid Pharmacy at 1300 Willow Avenue, Hoboken, identified respondent as having presented a prescription for Lortab 10/500 for 60 pills to be filled under the name of Sohair Mikhail. Ms. Lai called the doctor's office to verify the prescription, and was told that the prescription was fake. Ms. Lai also advised that on April 4, 2008, respondent had filled a prescription for Lortab 10/500 for 60

pills under the name of Suuad Habel, and on April 14, 2008 he filled a prescription for Vicoprofen for 90 pills under the name of Suuad Habel. Based upon the information furnished by Ms. Lai, respondent was arrested. When searched at police headquarters, respondent had 34 loose pills in his pockets. .

4. On or about February 5, 2009, respondent was indicted in the Superior Court of New Jersey, Hudson County, on one count of knowing or purposeful possession of hydrocodone, in an amount of five dosage units or more, that were not prescribed or administered by a person authorized to prescribe medication, in violation of N.J.S.A. 2C:35-105e(2), and one count of knowing and unlawful acquisition or possession of a controlled dangerous substance (hydrocodone), by misrepresentation, fraud, forgery, deception or subterfuge, in violation of N.J.S.A. 2C:35-13.

5. On or about February 4, 2010, respondent was convicted on the basis of his October 19, 2009 guilty plea to one count of third-degree obtaining CDS by fraud in violation of N.J.S.A. 2C:35-13. Respondent was sentenced to two years of probation, during which he is required to obtain and maintain employment, remain drug free, have random urine monitoring and counseling as required.

6. Respondent has been the subject of prior disciplinary action. By Order entered on April 30, 2003, respondent surrendered his license to practice pharmacy and admitted that he had a substance abuse problem and that he had been arrested for the issuance of fraudulent prescriptions to obtain Vicoprofen for his own consumption.

7. By Consent Order filed April 4, 2006, respondent's license to practice pharmacy in New Jersey was to be reinstated with conditions, after successful completion of criminal history background check and proof of continuing education. Respondent's license was placed on

probationary status for two years from the date of reinstatement, and he was required, among other things, to submit to random urine monitoring for a minimum of once per week for the first six months after reinstatement and then a minimum of two times per month for the remaining eighteen months. All reports were to be sent to the Board's executive director or her designee. In addition, respondent was to abstain from all psychoactive substances, including alcohol and CDS, and was not permitted to possess any CDS except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment.

8. Respondent's license was reinstated by the Board on September 24, 2007. By the terms of the April 4, 2006 Consent Order, respondent was required to submit reports of his random urine monitoring for two years from the date of reinstatement, or September 24, 2007 through September 24, 2009. The Board's records indicate that respondent submitted monitoring reports from July 7, 2006 to March 4, 2007, a period of time in which he was not required by Board order to be monitored, but no reports were filed after September 24, 2007.

CONCLUSIONS OF LAW

Respondent's plea of guilty to third degree obtaining CDS by fraud is a conviction for a crime of moral turpitude and is adversely related to the profession of pharmacy and provides a basis to take disciplinary action against respondent's license to practice pharmacy in New Jersey pursuant to N.J.S.A. 45:1-21(b) and (f). In addition, respondent failed to comply with the terms of the April 4, 2006 Consent Order by failing to provide reports of urine monitoring from September 24, 2007 through September 24, 2009, providing an additional and independent basis for discipline pursuant to N.J.S.A. 45:1-21(e) and N.J.A.C. 13:45C-1.4.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline seeking the suspension of respondent's license to practice pharmacy in the State of New Jersey was entered on October 13, 2010 and a copy was forwarded to respondent's last known address by means of both regular and certified mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

The Provisional Order was served on respondent on or about October 29, 2010, the date the green return receipt card was stamped by the Elmont, New York post office. A response was therefore due no later than November 30, 2010. On December 7, 2010, an undated letter from respondent was received by the Board. The Board reviewed respondent's letter, in spite of its late arrival. The Board was not persuaded that the submitted materials merited further consideration, as respondent did not dispute the Findings of Fact or Conclusions of Law. Respondent's letter contained an apology to the Board for his prior conduct, and set forth his past history and how he became an addict. Respondent expressed remorse, and requested that the Board permit him to transfer his license to Florida to continue his education and work in a non-retail environment there. Respondent admitted that he cannot blame the Board for judging him on his previous conduct, and offered to submit to any protocols the Board sees fit, including urine screens, to prove his sobriety. In fact, the information in respondent's letter was similar to that set forth in a previous letter sent to

the Board, which the Board reviewed prior to the issuance of the POD in this matter, and therefore no mitigation of penalty was warranted. The Board considered that this is respondent's second offense, and that respondent failed to comply with the prior Order, thus, the Board determined that further proceedings were not necessary and that the Provisional Order should be made final.

ACCORDINGLY, IT IS on this 24th day of JANUARY, 2011

ORDERED that:

1. Respondent's license to practice pharmacy in the State of New Jersey is hereby suspended for a minimum of five years. The Board will not entertain an application for the reinstatement of respondent's license to practice pharmacy in the State of New Jersey for a minimum of five years from entry of this Order.

2. Respondent shall immediately cease and desist from engaging in the practice of pharmacy, which includes, but is not limited to the following: respondent shall not handle, order, inventory, compound, count, fill, refill or dispense any drug; he shall not handle anything requiring a prescription, including devices and medications; he shall not handle prescriptions; he shall not advise or consult with patients, and he is prohibited from being present within a prescription filling area of a pharmacy.

3. Upon entry of this Order, respondent shall surrender his original wall certificate, his wallet certificate, and his most recent renewal card of his license to the Executive Director of the Board by mailing same to Joanne Boyer, Executive Director, Board of Pharmacy, 124 Halsey Street, P. O. Box 45013, Newark, New Jersey 07101.

4. Prior to any restoration of his license, respondent shall:

a. Provide, to the Board's satisfaction, evidence that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and

welfare and that he is not then suffering from any impairment or limitation resulting from the use of any addictive substance or health condition which could affect his practice.

b. Provide the Board with complete treatment records of all diagnostic and rehabilitative therapy, discharge summaries from any in-patient programs, as well as reports from each and every mental health professional (including but not limited to: psychologists, counselors, therapists, psychiatrists) who has participated in Respondent's care and/or treatment during the period of time from the date of the incidents giving rise to the within Order to his appearance before the Board pursuant to this Order.

c. Provide the Board with a full account of his conduct during the intervening period of time from the entry of this Order to his appearance pursuant to this Order.

d. Provide the Board with proof of compliance with the terms of his judgment of conviction, resolution of any other criminal charges filed against him and compliance with any terms imposed by the criminal authorities, including probation, related to this matter.

e. Appear before the Board or a committee thereof, if so requested, to discuss his readiness to reenter practice as a pharmacist. At that time Respondent shall be prepared to propose his plans for future practice in New Jersey.

f. Provide documentation of successful completion of all application requirements including a Criminal History Background Check and payment of all reinstatement fees.

5. If Respondent's license to practice pharmacy is reinstated, the Board, in its discretion, may impose any conditions or restrictions on licensure it deems necessary to protect the public health, safety and welfare.

6. Any practice in this State in violation of the above conditions shall constitute grounds for discipline for violation of a Board Order and professional misconduct

NEW JERSEY STATE BOARD OF PHARMACY

By: Edward G. McGinley
Edward G. McGinley, R.Ph.
President